

ReCoMaP/IOC/UNEP

**First Regional Working Group Meeting on Drafting and
Negotiation of ICZM Protocol to Nairobi Convention
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Justifications for and Outline of ICZM Protocol
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A. Overview

- In the context of the development, drafting and negotiation of the proposed ICZM Protocol to the Nairobi Convention, this presentation covers the following issues:
 - 1) The Need for an ICZM Protocol to the Nairobi Convention(Part 1);
 - 2) Outline of the proposed ICZM Protocol, including key aspects and characteristics(Part 2); and
 - 3) Key risks and assumptions and guidance to countries on national experiences and practicalities concerning development of ICZM Protocol(Part 3)



PART I: The Need for an ICZM Protocol to the Nairobi Convention

The Need for an ICZM Protocol to the Nairobi Convention

Generic Justifications

- According to Birnie, Boyle and Redgwell (*International Law and the Environment, 3rd Ed, 2008, p 89*), in spite of difficulties in their practical operation, there are advantages in a regional approach to some environmental issues, including:
 - i. Such arrangements facilitate policies and rules appropriate to the needs of particular areas;
 - ii. Political consensus may be obtainable at a regional level which could not be obtainable at global level;
 - iii. Cooperation in enforcement, monitoring and information exchange may be easier to arrange.

The Need for an ICZM Protocol to the Nairobi Convention

- However, the authors also caution that the weaknesses of many regional regimes should not be overlooked, and emphasize the benefits to be derived from ensuring that such regimes are structured within a framework of minimum global standards with some oversight and supervision at global level.

The Need for an ICZM Protocol to the Nairobi Convention

- i. Scientific and technical justifications: it is increasing harder to draw a clear dividing line between the marine environment and the land environment. The greatest impact on the marine environment comes more from land based sources and activities than sea based sources.*
- ii. Implementation of Framework Provisions of 1982 UNCLOS: Nairobi Convention framework, generally can be held to be a means of giving effect to the framework provisions of 1982 UNCLOS. Moreover, it demonstrates evidence of the implementation and adoption of 1982 UNCLOS' main provisions at regional level.*

The Need for an ICZM Protocol to the Nairobi Convention

- The proposed ICZM Protocol to the Nairobi Convention is seen as part of the efforts in the WIO Region to provide more specific rules on an aspect covered by the 1982 UNCLOS and Agenda 21(1992). The latter, a major international environmental policy document, calls upon countries to implement ICZM.
- In this regard, there is need for a region wide cooperative and collaborative approach to secure the WIO Region, including through a Regional ICZM Policy Platform.

The Need for an ICZM Protocol to the Nairobi Convention

- The ICZM Protocol fits well within the overall structure of regional protection of the marine environment contemplated under the 1982 UNCLOS, Agenda 21 and the 2002 Johannesburg Declaration and Plan of Implementation.
- By way of example, 1976 Barcelona Convention became first regional seas convention to be comprehensively amended, expanded and re-named in line with Agenda 21 (now 1995 Barcelona Convention). Following upon the revision, a new ICZM Protocol was adopted in 2008.

The Need for an ICZM Protocol to the Nairobi Convention

Specific Justifications

- According to the Feasibility Assessment Study (Feb 2010), several justifications explain the need for an ICZM Protocol to the Nairobi Convention:
- ✓ ICZM Not yet a routine management process for the WIO Region, although it is widely acknowledged, and the coastal and marine environment is under increasing pressure from human activities.

The Need for an ICZM Protocol to the Nairobi Convention

- ✓ All countries of the WIO Region are inter-linked by ecological, socio-economic and political issues, including climate change, thus necessitating region wide, anticipatory and coordinated efforts.
- ✓ Several gaps exist in existing regional and national normative frameworks, with transboundary effect, thus necessitating a regional ICZM Protocol framework.

The Need for an ICZM Protocol to the Nairobi Convention

- ✓ Developments in most countries of the Region, such as national ICZM bodies, policies, strategies and plans, all necessitating a regional coordinative framework.
- ✓ Need for a shared theoretical and methodological framework across the countries of the WIO Region
- ✓ Need to boost the Nairobi Convention framework with an additional regulatory instrument.
- ✓ An ICZM Protocol could motivate international donors to get more involved in ICZM issues in the WIO Region, including support for implementation of the instrument.

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- PART 2:
 - OUTLINE of ICZM PROTOCOL TO THE NAIROBI CONVENTION

Outline of ICZM Protocol.

- The following key parts, aspects and issues are covered in the pre- zero-draft of the ICZM Protocol:

Title:

It is proposed to name it “The (Zero) Draft Integrated Coastal Zone Management (ICZM) Protocol to the Amended Nairobi Convention (2010).”

Outline of ICZM Protocol

Preamble

- The importance of a comprehensive, innovative and yet concise preamble cannot be over emphasized. This part will capture the spirit of the ICZM Protocol and place it in the context of past, present and future legal instruments. The preamble should include the global and regional efforts dealing with integrated coastal zone management. It should point out the desirability of a regional protocol for better and more detailed description of ICZM issues. It should also express the magnitude and adverse consequences of planning or managing the coastal zone without an integrated approach.
- In the preamble, references should be made regarding, among others, (i) the legal background, (ii) historical references on ICZM implementation in the WIO region, (iii) the threats the coastal zones in the region are facing and (iv) the needs to which the Protocol is proposed to respond.

Outline of ICZM Protocol

Part 1: General Provisions

1. Definitions

There should be a clear and concise definition of terms, phrases or concepts used in the Protocol, clearly consistent with and linked to or cross-referenced with the Nairobi Convention, its other protocols, and other environmental instruments. This article should give the definitions of key words and concepts, such as, *inter alia*, “Parties,” “Convention,” “Secretariat,” “coastal zone,” “integrated coastal zone management”, etc.

Outline of ICZM Protocol

2. Objectives and Purposes of ICZM

The general objectives and purposes of the ICZM should be defined, and should include the “needs” identified in the Preamble. It may be held that the purpose of ICZM is to maximize the benefits provided by the coastal zone and to minimize the conflicts and harmful effects of activities upon each other, on resources and on the environment. The ICZM process is designed to overcome the fragmentation inherent in both the sectoral management approach and the splits in jurisdiction among levels of government and the land-water interface.

Outline of the ICZM Protocol

3. Geographical Scope of the Protocol

The Protocol should identify the Protocol Area. This should comply with maritime boundary regimes recognized under the international law of the sea, and be consistent with the Nairobi Convention and its other protocols. The geographical coverage of the ICZM Protocol identifies its field of application both at land and sea. In this regard, a flexible approach should be adopted in defining the geographical coverage of the Protocol.

Outline of ICZM Protocol

4. Preservation of Rights

In this article, States could be keen to add, in their specific interests, provisions regarding maritime delimitations, boundary claims or military activities or other disclaimers. Such are generally acceptable in international law making.

Outline of ICZM Protocol

5. General Obligations

The key generic obligations of the Contracting Parties to the Protocol should be adequately elaborated so that states know the full extent and nature of their obligations and legal commitments under the protocol. Such statements of obligation form the overall basis upon which several other more specific Contracting Party obligations are set out in the Protocol.

Outline of ICZM Protocol

6. General Principles of ICZM

A concise statement of ICZM principles is needed to guide the rest of the Articles, and ensure that in implementation of ICZM in the WIO Region, these benchmarks are observed. These include recognition of the need to establish and promote ecosystems approach; protection of biological wealth and natural dynamics; complementarity and interdependence of the sea ward and seaward parts of the coastal zone; cross sectoral institutional coordination; participation and empowerment of communities and other stakeholders, etc.

Outline of ICZM Protocol

Part 2: ICZM Instruments and Tools

7. National ICZM Strategies

A National ICZM Strategy should be elaborated by each Contracting Party. The aim of such of an instrument should be to organise and coordinate efforts to implement the Protocol. In particular, the National ICZM Strategy could, *inter alia*: (i) assess the state of the coastal zones and the threats the coastal ecosystems are facing (sensitivity, vulnerability, resilience, exposure, etc.), take into account risks associated to climate change, (ii) include a national strategy for the implementation of the ICZM Protocol, taking into consideration specific management approaches for different ecological types of the national coastline, (iii) provide for the elaboration of regional planning documents, specifying the distribution of competences between States and intra-States authorities, (iv) identify and mobilize financial resources for its implementation.

Outline of ICZM Protocol

8. National ICZM Committee

A National ICZM Committee should be created and sustainably institutionalized by each Contracting Party in order to (i) support and facilitate the implementation of the National ICZM Strategy, (ii) ensure coordination between the relevant sector line agencies and administrative services involved in coastal issues and coastal management, (iii) elaborate or command reports and studies dedicated to coastal issues, (iv) propose legal, institutional, administrative and technical measures to ensure effective ICZM implementation, (v) create relationships and partnerships with local authorities and stakeholders, (vi) participate in the Regional ICZM Policy Platform (see below paragraph 23).

Outline of ICZM Protocol

9. Coastal Zoning and Planning

The Protocol should invite States to adopt or reinforce sub-national and local coastal zoning and planning documents as a way of implementing National ICZM Strategies and the Protocol's provisions. In particular, these documents should: (i) provide for and enable the sustainable development of coastal zones, (ii) be adopted at any relevant geographic or administrative scale, (iii) devote special attention to the preservation of coastal and marine ecosystems, (iv) take into account the risks associated with climate change, (v) take into account the special environmental, social and economic needs of Small Island Developing States (SIDS), (vi) ensure special attention to the sustainable management of watersheds, (vii) reduce coastal erosion and other degradation and sediments fluxes, (viii) be regularly updated.

Outline of ICZM Protocol

10. Urban Planning

The Protocol could contain a number of provisions related to urban planning, especially addressing (i) spatial planning, (ii) coastal setback and (iii) cadastre. The detailed provisions of these could be elaborated in **Annex**.

Outline of ICZM Protocol

11. Preservation of Ecosystems

The preservation of ecosystems should become an obligation integrated into any coastal policy, strategy and planning document and decision. In particular: (i) special attention should be paid to fragile and vulnerable ecosystems, such as wetlands, coral reefs, dunes, lagoons; (ii) States should adopt regulations dealing with the conservation and sustainable management of ecosystems beyond protected areas rules and legislation; (iii) all coastal activities should be developed respecting the need for integrity of coastal and marine ecosystems.

Outline of ICZM Protocol

12. Regulation of Coastal Activities

- From a general point of view, the development of coastal activities should be subjected to a high degree of environmental protection. Therefore, States should have relevant legal instruments in place to regulate, limit, enforce and if necessary prohibit both economic and recreational activities in specific coastal and marine areas.
- In this article, special regulations could be provided for certain specific coastal activities, such as aquaculture, tourism, sand extraction.
- In addition, special legislation and planning instruments should be elaborated to ensure the application of environmental impact assessment and prior formal technical authorisation of all public and private projects likely to affect coastal and marine zones.

Outline of ICZM Protocol

13. Economic Instruments

States should adopt relevant economic mechanisms to support the implementation of ICZM, at national and local levels. These include removing unsustainable public subsidies, tax and fiscal incentives, etc.

Outline of ICZM Protocol

Part III: Governance Mechanisms

14. Institutional Coordination

- Being one of the core principles of ICZM, special emphasis has to be placed on institutional and sector coordination. In particular, States should: (i) ensure or strengthen efficient and effective coordination between all relevant sector line agencies and administrative services involved in coastal and marine management, (ii) create or consolidate legal coordination entities and develop effective coordination instruments to be applied by these entities, (iii) coordinate sector policies in order to adopt, insofar as practicable, a coherent ICZM approach, (iv) ensure appropriate coordination with local authorities.
- National ICZM Committees or their respective counter parts in the countries should play the lead role regarding institutional coordination.

Outline of ICZM Protocol

15. Spatial Integration

- “Spatial integration” requires taking into account the interdependence of coastal land and sea in any political and technical decision. This challenge invites States, when elaborating coastal development strategies, planning documents or urban planning rules, to determine a field of intervention adapted to ecological and geographical circumstances so as to integrate both terrestrial and marine parts of coastal zones.
- In addition, States should organise an appropriate coordination between the authorities competent at land and at sea. The National ICZM Strategy (see Article 7), local planning documents (see Article 9) and urban planning rules (see Article 10) should be elaborated and implemented according to this integrated approach.

Outline of ICZM Protocol

16. Communication, Information, Participation and Access to Justice

Even if these four issues are usually regulated in separated articles, it might be relevant to link them in a unique one, which would therefore underline that not only do they complement each other, but none of them can be implemented if deprived of support from the three others.

Outline of ICZM Protocol

17. Integration of Adaptation to Climate Change in Coastal Policies

- Adaptation to climate change should be systematically integrated in all coastal policies, including National ICZM Strategies, urban and regional planning documents and rules. In this regard, States should (i) take into account all climate-induced risks coastal zones are facing due to, in particular, sea level rise, increase in frequency / intensity of extreme weather events, ocean acidification, and their related consequences on ecosystems and populations, (ii) conduct, insofar as practicable, studies of climate change impacts on coastal policies and (iii) ensure that coastal policies contribute to building resilience of coastal and marine ecosystems, economies and populations to climate change.
- Public decisions should be based on the best available science. States should therefore develop and reinforce scientific and technical knowledge on climate change, its impacts and response strategies, and should cooperate to this purpose (see paragraph 21).

Outline of ICZM Protocol

18. Sustainability of Adaptation to Climate Change Decisions

- Public decisions and measures related to climate change adaptation should be sustainable from an environmental point of view and should not increase, directly or indirectly, the pressures on the coastal and marine environment, its resources and services.
- Moreover, States should ensure that financial and technical resources related to climate change adaptation synergize with the implementation of ICZM at national, international and regional levels.

Outline of ICZM Protocol

19. Connectivity of Ecosystems

In light of projected and plausible future climate changes, there is a need to ensure that biodiversity and protection policies and tools favour sufficient connectivity between valuable ecosystems, in particular “hot spots”, to allow migration, transport and exchange of organisms between ecosystems.

Outline of ICZM Protocol

20. Consultation and Coordination

Special emphasis should be put on the need for increased consultation and coordination between government sectors, government line agencies and administrative services competent in coastal and climate issues to allow for the elaboration and implementation of relevant adaptation strategies at national and multilateral levels.

Outline of ICZM Protocol

PART V: REGIONAL COOPERATION

21. Regional ICZM Policy Platform

Composed of representatives of National ICZM Committees, a regional ICZM Policy Platform should be set up in order to: (i) promote ICZM in general and the implementation of the Protocol in particular, (ii) develop a network of regional experts and therefore share national experiences regarding coastal zone management, (iii) identify the needs (economic, scientific, technical...) of the WIO region for better ICZM implementation, (iv) promote regional ICZM initiatives at the international level.

Outline of ICZM Protocol

22. Disaster Management

States should cooperate in organising disaster management procedures and mechanisms, providing, for instance, (i) early warning system (tsunami, cyclones, etc); (ii) a regional catastrophe risk insurance facility to reduce economic impacts of natural catastrophes.

Outline of ICZM Protocol

23. Research

States should cooperate, through the Secretariat/Organization and relevant international and regional organisations, bilaterally or multilaterally, to develop and promote scientific research and technical knowledge in the field of ICZM. This requires increased joint and complimentary national efforts towards data collection and the promotion of standardised, regionally applicable analysis and modelling tool. Regional research cooperation could be reached by, *inter alia*, (i) the creation of scientific partnerships between national public and/or private institutes, (ii) the elaboration and/or iii) the coordination of research projects.

Outline of ICZM Protocol

24. Transboundary Cooperation

States should cooperate, through the Secretariat, and relevant international and regional organisations, bilaterally or multilaterally, to coordinate, where necessary, their National ICZM Policies, Strategies as well as zoning and planning documents related to the contiguous nature of many coastal zones.

Outline of ICZM Protocol

25. Scientific and Technical Assistance

- States should cooperate, directly or with the assistance of the Secretariat/Organization and international or regional organisations, to provide scientific and technical assistance to Parties requiring it.
- States should also study the technical and economical feasibility of establishing a regional centre especially dedicated to ICZM issues. The mission of such a centre could be, *inter alia*, to (i) provide scientific and technical assistance to Parties in the implementation of the Protocol, (ii) elaborate, command and circulate studies and reports on coastal issues, (iii) scientifically and technically support and lead the Regional ICZM Policy Platform.

Outline of ICZM Protocol

26. Financial Resources

In their relations with international donors, States should emphasize the need to develop transboundary ICZM programmes and projects specially dedicated to the implementation of the Protocol at regional scale in the WIO region.

Outline of ICZM Protocol

PART VI. INSTITUTIONAL AND FINANCIAL ARRANGEMENTS

There ought to be necessary institutional and financial arrangements to support ICZM in the WIO Region. These should include the articles below.

28. Secretariat and Coordination Mechanisms

29. Meeting of the Parties

30. National Focal Points

31. Financial Arrangements

Outline of ICZM Protocol

27. Implementation of other Relevant Instruments

States should emphasize the need to implement all relevant international and regional agreements covering coastal issues, in particular the protocols adopted within the framework of the Nairobi Convention.

Outline of ICZM Protocol

PART VII. FINAL PROVISIONS

Finally, the usual final provisions such as the below are recommended.

32. Relationships with the Convention

33. Relationships with Third Parties

34. Signature, Ratification, Accession, Entry into Force,
etc



PART 3: Key risks and assumptions and guidance to countries on national experiences and practicalities concerning development of ICZM Protocol.